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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,787	08/17/2003	Larry W. Collum		1786

7590 08/27/2009  
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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 08/27/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 10/604,787	<b>Applicant(s)</b> COLLUM ET AL.	
	<b>Examiner</b> Stephen L. Blau	<b>Art Unit</b> 3711	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 01 June 2009 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Stephen L. Blau/  
Primary Examiner, Art Unit 3711

Continuation of 10. Other (including any explanation in support of the above items): It appears by the argument section (7) of the brief that the appeal is to have the amendment dated 11 January 2007 entered. This is not an appealable matter before the Board of Patent Appeals and Interferences (BPAI). Instead if an Examiner refuses to enter an amendment this can be petitioned to the Technology Center Director (See article 1002.02(c) of the Manual of Patenting Examining Procedures (MPEP)). Since the Examiner has yet to decide on this after final amendment dated 11 January 2007 the Examiner will do so now. The amendment will not be entered or considered due to proper procedures were not used to make changes to the claims. Claim 8 was significantly modified added words where not underlined and removed words did not have strikethroughs or double brackets as required by article 714 (MPEP). If the Applicant does not use proper procedures to add and remove words in claims the Examiner is uncertain what is being added or removed. The amendment also will not be entered or considered due to this case being in a final status. This means prosecution has stopped and the Examiner is unwilling to continue prosecuting claims rejected by prior art as is claim 8. The amendment does not place all the claims in condition for allowance. If the Applicant submitted an amendment after final which cancels claims 1-3, 5-8, 10-11, and 13-14 and included new claims 15-16 the Examiner would issue this case after conducting an updated search and no new art was found able to reject claims 4, 9, 12 and 15-16. The Applicant is reminded that the current entered list of claims are those dated 9 April 2006 and all amendments to claims should be based on this list of claims.